

JUDGE KAPLAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DONALD L. WILLIAMS on behalf of himself
and all others similarly situated,

Plaintiff,

-against-

EVERGREEN PROFESSIONAL RECOVERIES, INC.

Defendant.

08 CIV. 5897

CLASS ACTION COMPLAINT

Introduction

1. Plaintiff seeks redress for the illegal practices of Evergreen Professional Recoveries, Inc. concerning the collection of debts, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA").

Parties

2. Plaintiff is a citizen of the State of New York who resides in Bronx County, New York.
3. Plaintiff is a "consumer" as that term is defined by Section 1692(a)(3) of the FDCPA, in that the alleged debt that defendant sought to collect from plaintiff is a consumer debt, purportedly owed to Monterey County Bank.
4. Upon information and belief, the defendant is Washington State corporation.
5. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.
6. Defendant is a "debt collector" as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6).



Jurisdiction and Venue

7. This Court has Federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district. Venue is also proper in this district since the defendant transacts business in this district and the collection letter was sent into this district.

Allegations Particular to Donald L. Williams

9. On information and belief, on a date better known by defendant, defendant began attempting to collect an alleged consumer debt from the plaintiff.
10. On or about July 5, 2007 defendant sent the plaintiff a collection letter.
11. Said letter states in part as follows: "Not having heard from you on this account, further collection efforts are being considered. TO avoid paying additional charges immediately send the balance IN FULL by return mail to the above address."
12. Said language contains false threatens and deceptive representations in violation of 1692e(5) and 1692e(10).

AS AND FOR A FIRST CAUSE OF ACTION

Violations of the Fair Debt Collection Practices Act brought by plaintiff on behalf of himself and the members of a class, as against the defendant.

13. Plaintiff restates, realleges, and incorporates herein by reference, paragraphs 1-12 as if set forth fully in this Cause of Action.
14. This cause of action is brought on behalf of plaintiff and the members of a class.
15. The Class consists of consumers who received the same form letter, as did the

plaintiff.

18. The Class consists of all persons whom Defendant's records reflect resided in the State of New York and who were sent a collection letter (a) bearing the defendant's letterhead in substantially the same form as the letter sent to the plaintiff on or about July 5, 2007 (b) the collection letter was sent to a consumer seeking payment of a personal debt; and (c) the collection letter was not returned by the postal service as undelivered, (d) and that the letter contained violations of 15 U.S.C. §§ 1692e(5) and 1692e(10).

19. Pursuant to Federal Rule of Civil Procedure 23, is appropriate and preferable in this case because:

- (A) Based on the fact that the collection letters that are at the heart of this litigation are mass-mailed form letters, the class is so numerous that joinder of all members is impracticable.
- (B) There are questions of law and fact common to the class and these questions predominate over any questions affecting only individual class members. The principal question presented by this claim is whether the Defendant violated the FDCPA.
- (C) The only individual issue is the identification of the consumers who received the letters, (*i.e.* the class members), a matter capable of ministerial determination from the records of Defendant.
- (D) The claims of the plaintiff are typical of those of the class members. All are based on the same facts and legal theories.
- (E) The plaintiff will fairly and adequately represent the class members' interests. The plaintiff has retained counsel experienced in bringing class actions and collection-

abuse claims. The plaintiff's interests are consistent with those of the members of the class.

20. A class action is superior for the fair and efficient adjudication of the class members' claims. Congress specifically envisions class actions as a principal means of enforcing the FDCPA. 15 U.S.C. 1692(k). The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action. Prosecution of separate actions by individual members of the classes would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

21. If the facts are discovered to be appropriate, the plaintiff will seek to certify a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

22. Collection letters, such as those sent by the defendant are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."

Violations of the Fair Debt Collection Practices Act

23. The defendant's actions violate the Fair Debt Collection Practices Act.

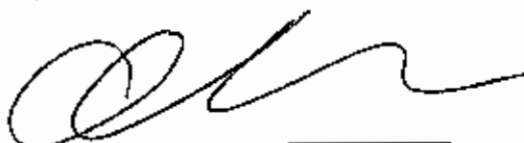
24. Because the defendant violated of the Fair Debt Collection Practices Act, the plaintiff and the members of the class are entitled to damages in accordance with the Fair Debt Collection Practices Act.

WHEREFORE, Plaintiff, respectfully requests that this Court enter judgment in his favor and on behalf of the members of the class, and against the defendant and award damages as follows:

(a) Statutory damages provided under the FDCPA, 15 U.S.C. 1692(k);

- (b) Attorney fees, litigation expenses and costs incurred in bringing this action; and
- (c) Any other relief that this Court deems appropriate and just under the circumstances.

Dated: Cedarhurst, New York
June 25, 2008



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Plaintiff requests trial by jury on all issues so triable



Adam J. Fishbein (AF-9508)



July 5, 2007

Account #: 2694119

RETURN SERVICE REQUESTED

Pay your bill online: www.everprof.com



DONALD L WILLIAMS
271 E 197TH ST
APT 2E2E
BRONX NY 10458-3346

FINAL NOTICE

Not having heard from you on this account, further collection efforts are being considered. To avoid paying additional charges immediately send the balance IN FULL by return mail to the above address.

This communication from a debt collector is an attempt to collect a debt and any information obtained will be used for that purpose.

CREDITOR	AMOUNT	INTEREST	FEES	TOTAL
MONTERAY COUNTY BANK	1949.01	0.00	0.00	1949.01
TOTAL	1949.01	0.00	0.00	1949.01

EVERGREEN PROFESSIONAL RECOVERIES 12100 NE 195th Street, #325 * Bothell, WA 98011 800-241-1305

PLEASE DETACH HERE AND RETURN WITH YOUR PAYMENT IN THE ENVELOPE PROVIDED

Account #: 2694119

If paying by Credit Card, please complete this section			
<input type="checkbox"/>	CARD NUMBER	AMOUNT	CVV (3 or 4 digit code on back of Card)
<input type="checkbox"/>	SIGNATURE	EXP. DATE	
CARDHOLDER NAME (Please Print)		<input type="checkbox"/> Check here if Cardholder address is the same. If not, provide Cardholder address on back of statement.	

Pay your bill online: www.everprof.com

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